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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,575	09/05/2006	Steven Andrew Skelton	KRB-0229US	7478

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NIXON PEABODY, LLP
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WASHINGTON, DC 20004-2128

EXAMINER

KIRSCH, ANDREW THOMAS

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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09/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,575	Applicant(s) SKELTON ET AL.	
	Examiner ANDREW T. KIRSCH	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The amendment filed 8/6/2009 has been entered.

Response to Amendment

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. However, the rejections of this action are final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

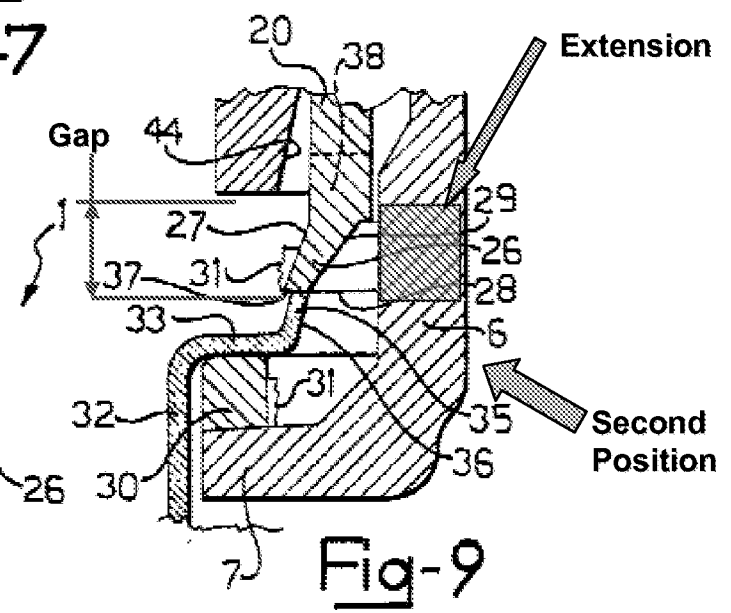
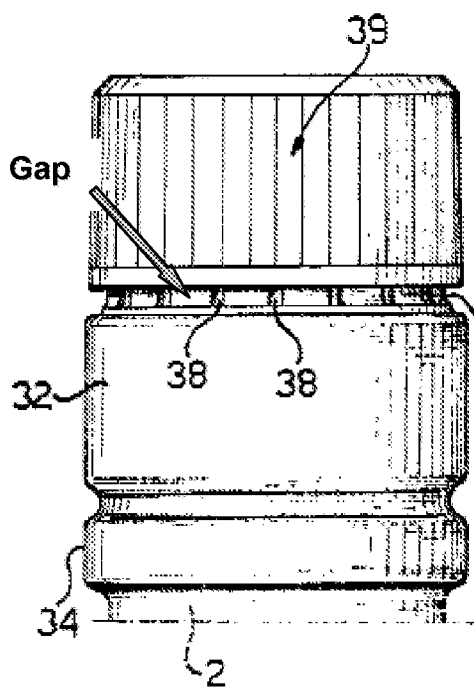
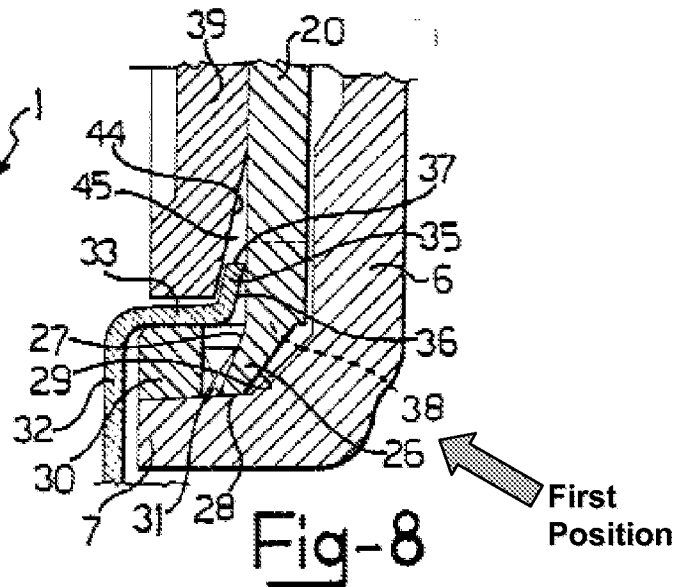
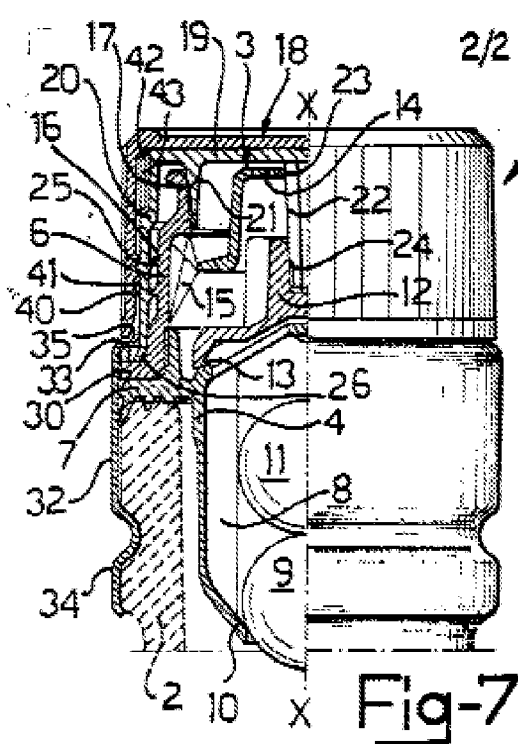
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent Application GB 2158424 (Guala hereinafter).
5. In re claim 1, with reference to Figs. 7-10 below, Guala discloses: A tamper-evident closure (1) for a container, the closure comprising: a first portion (6, 18, 20, 39) including an inner (6) and outer part (18, 20, 39); and a second portion (30), the outer part (18, 20, 39) being movable relative to the inner part (6) (see Figs. 8 and 9) from a first position in which the outer part is immediately adjacent the second portion (30, see Fig. 8) to a second position in which there is an unobstructed gap (see Fig. 9) there between about the entire periphery of the outer part and the second portion, the inner and outer parts being constructed and arranged to become irreversibly locked in the second position so that the outer part cannot be moved back to the first position to close

Art Unit: 3781

the gap. Note that the gap is considered to be unobstructed in the areas between each of the plurality of ratchets 38.

6. With regards to there being “an unobstructed gap therebetween about the entire periphery of the outer part and the second portion,” examiner interprets “about” to mean around or in the proximity of. The gap of Guala is clearly in the proximity of the periphery of the second portion, and therefore, meets the limitation of the claim.



Art Unit: 3781

7. In re claim 2, with reference to the Figs. above, Guala discloses the claimed invention including wherein the second portion is constructed and arranged to be connected to a container and the first portion comprises a cap (39).

8. In re claim 3, with reference to the Figs. above, Guala discloses the claimed invention including wherein the second portion (30) is permanently fixed in its position on the container.

9. In re claim 4, with reference to the Figs. above, Guala discloses the claimed invention including wherein the first portion is constructed and arranged to engage an in-bore fitment (3) associated with the container (page 1, lines 82-88).

10. In re claim 5, with reference to the Figs. above, Guala discloses the claimed invention including wherein the first portion (6, 18, 20, and 39) includes a ratchet arrangement (26) for locking the inner (6) and outer parts (18, 20, and 39) in the second position (see Fig. 9).

11. In re claim 6, with reference to the Figs. above, Guala discloses the claimed invention including wherein the first portion includes engagement formations (7) and the ratchet arrangement (26) is located above the formations.

12. In re claim 7, with reference to the Figs. above, Guala discloses the claimed invention including wherein the gap is formed at the respective adjacent peripheries of the portions (see Fig. 10).

13. In re claim 8, with reference to the Figs. above, Guala discloses the claimed invention including wherein the inner part includes an extension (see Fig. 9) which

Art Unit: 3781

extends beyond the outer part towards the second portion in the second position, the extension being positioned so as to be visible through the gap.

14. In re claim 9, with reference to the Figs. above, Guala discloses: in combination a container (2) and a tamper evident closure (1), the combination comprising: a first portion (6, 18, 20, 39) including an inner (6) and outer part (18, 20, 39); and a second portion (30), the second portion being connected to the container and the first portion being a removable top cap (39) (page 1, lines 111-112), the first portion outer part being movable relative to the inner part from a first position in which the outer part (18, 20, 39) is immediately adjacent the second portion (30) (page 3, lines 34-35) (see Fig. 8) to a second position in which there is an empty, unobstructed gap therebetween (see Fig. 9) about the entire periphery of the outer part and the second portion (as in re claim 1 above), wherein in the second position the first portion (6, 18, 20, 39) is removable (page 2, lines 87-88) and the inner (6) and outer parts (18, 20, 39) are constructed and arranged to be irreversibly locked in the second position, so that the outer part cannot be moved back to the first position to close the gap when the first portion is replaced (page 1, lines 53-54).

15. In re claim 10, with reference to the Figs. above, Guala discloses the claimed invention further comprising an in-bore fitment (3) connectable to the container (page 1, lines 82-86), the first portion being constructed and arranged to engage the fitment (page 1, lines 87-88).

Response to Arguments

16. Applicant's arguments filed 3/10/2009 have been fully considered but they are not persuasive.

17. On page 5, of the Remarks, Applicant argues that the gap as described in Guala is different from the claimed gap in that the gap of Guala may be removed by a simple cutting operation. Examiner asserts that the gap of Guala prevents the cutting of the locking mechanism in as much as the claimed invention in that the locking mechanism is located at a point inwards of the gap. If the applicant insists that the locking mechanism of Guala may be overcome by cutting, the same could be said the claimed invention which would not distinguish the claimed structure and function from the prior art of record.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3781

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, Off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781